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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 577

ARTHUR W. MITCHELL,

Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

RICHARD E. WESTBROOKS,
ARTHUR W. MITCHELL,
Counsel for Appellant.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

In Equity No. 500

ARTHUR W. MITCHELL,

Plaintiff,

vs.

UNITED STATES OF AMERICA, ET AL.

Defendants.

JURISDICTIONAL STATEMENTS.

Statement of basis on which plaintiff contends the Supreme Court of the United States has jurisdiction to review on appeal the decree appealed from, as required by Supreme Court Rule 12.

Pursuant to Supreme Court Rule 12, par. 1, Arthur W. Mitchell, the above plaintiff, files this, his statement particularly disclosing the basis on which said plaintiff contends that the Supreme Court has appellate jurisdiction to review on appeal the decree and final order appealed from herein, as follows:

I. The statute believed to sustain appellate jurisdiction is Section 210 of the Judicial Code, also known as Sections 47 and 47-a of Title 28 United States Code Annotated (Judicial Code and Judiciary).

II. The order and decree appealed from was entered on the 27th day of June, 1940.

III. The application for an appeal was presented, allowed and filed August 23, 1940.

IV. The appeal herein is from an order and decree of the District Court, in a civil case in equity, filed in the District Court to set aside, annul and vacate in whole an order of the Interstate Commerce Commission.

Nature of the Case.

On September 2, 1937, the plaintiff filed complaint with the Interstate Commerce Commission (hereinafter called the Commission), naming as defendants Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the Chicago, Rock Island and Pacific Railway Company (hereinafter called the Rock Island), Illinois Central Railway Company (hereinafter called the Illinois Central), and the Pullman Company, alleging that the defendants had violated the provisions of the Interstate Commerce Act, which violations related to certain actions of the defendants towards the plaintiff on a continuous interstate journey from Chicago, Illinois, to Hot Springs, Arkansas, while the plaintiff was traveling as a first class passenger in interstate commerce, holding a first class railroad ticket for which he had paid the regular first class fare (3 cents per mile) according to the established and published tariff, which tariff had been filed with the Commission as required by law.

The complaint, among other things, alleged, that the defendants were common carriers engaged in the transportation of goods and persons wholly by railroad, engaged in interstate commerce between Chicago, Illinois and points in the State of Arkansas and as such common carriers were subject to the provisions of the Interstate Commerce Act.

That said defendants, on April 20, 1937, made and received a charge for services rendered the plaintiff in connection with the transportation of the plaintiff from Chicago, Illinois, to Hot Springs, Arkansas, in that, the plaintiff did purchase a first class round-trip ticket to and from Hot Springs, Arkansas, over the defendant's lines and was received in Chicago, Illinois as a first class passenger and furnished with equal first class accommodations and facilities with all other interstate passengers paying the same rate of fare and engaged in the same interstate journey on the lines of the defendant. That before the plaintiff had completed his interstate journey and had reached a point of more than a hundred miles from Hot Springs, Arkansas, the defendants forcibly ejected the plaintiff from the first class accommodations and facilities, then being furnished and used by all other first class passengers who were white persons, and plaintiff was compelled to complete his journey in second class accommodations which were furnished for use by colored passengers and known as the "Jim-Crow" car, which said colored passengers were only required to purchase second class tickets at reduced fares (2 cents per mile).

That the defendants failed and refused to furnish any first class accommodations to the plaintiff and all other colored persons paying first class fares and engaged in interstate journeys between Memphis, Tennessee and Hot Springs, Arkansas, the route traveled by the plaintiff on his interstate journey, although first class accommodations and facilities were furnished all white passengers paying first class fares and engaged in interstate journeys between the points above mentioned.

It was further alleged that the acts of the defendants towards the plaintiff and all other colored persons as above set forth were perpetrated solely on account of the race and color of the plaintiff and all colored persons, and under

a claim that the Separate Car Law of Arkansas applied to interstate passengers.

The plaintiff further alleged that the acts of the defendants were unjust and unreasonable and in violation of Section 1, clause 5 of the Interstate Commerce Act; that in charging the complainant greater compensation for service rendered in transporting him as an interstate passenger than was charged from other persons for doing for them a like and contemporaneous service, to-wit, that defendants charged plaintiff the price of first class accommodations yet furnished him second class accommodations while furnishing first class accommodations to all other white persons who had purchased first class tickets for first class accommodations, the defendants did thereby unjustly discriminate against the plaintiff in violation of Section 2 of the Interstate Commerce Act; that defendants gave undue and unreasonable preference and advantage to certain white persons who had paid the same first class fare for transportation from Chicago to Hot Springs, on the same interstate journey as that being engaged in by the plaintiff and subjected plaintiff to undue and unreasonable prejudice and disadvantage, in this that white persons holding first class tickets were transported throughout the entire journey, in a first class car with first class accommodations and facilities, while plaintiff was compelled to ride in a second class car for more than four hours and for a distance of about one hundred sixty miles in order to complete his interstate journey, although the plaintiff had paid for and was holding a first class ticket identical with the white persons, which actions of the defendants were in violation of Section 3 (1) of the Interstate Commerce Act.

The plaintiff further alleged that defendants, in compelling plaintiff to ride in a second class car, with second class and inferior accommodations (a fair description of the "Jim-Crow" car is contained in *Arthur W. Mitchell* v. *Chi-*

cago, Rock Island and Pacific Railway Company, et al., 229 I. C. C. 703), to the first class cars in which all white persons holding first class tickets identical in costs with the first class ticket held by the plaintiff, claimed to act under the authority of the Separate Car Law of Arkansas, defendants' action claiming to be based on the fact that plaintiff is a colored person, and defendants' said practice in furnishing said unequal accommodations to colored persons holding first class tickets, causes undue and unreasonable advantage and preference to white persons holding first class tickets and undue and unreasonable prejudice to plaintiff and all other colored persons who in the future will use, as interstate passengers, the lines of the defendants, said undue and unreasonable advantage and preference to white persons and undue and unreasonable prejudice to colored persons and the plaintiff, who will in the future use defendants' lines, is in violation of Section 13 (4) of the Interstate Commerce Act.

It is further alleged that the Separate Car Law of Arkansas does not apply to interstate passengers and did not apply to the plaintiff who held a first class ticket entitling him to first class accommodations and facilities during the entire interstate journey from Chicago to Hot Springs.

It is further alleged that the actions of the defendants violated the rights of the plaintiff under the 14th Amendment of the United States Constitution in denying to the plaintiff the equal protection of the laws.

The relief requested by the complaint was that, after due hearing and investigation, the Commission enter an order commanding the defendants to cease and desist from the violations of the Act alleged in the complaint and to establish and apply in the future to the transportation of persons between the origin and destination named, in lieu of the services and facilities pleaded such other services and facilities as the Commission may deem reasonable and just.

Answers to the complaint were filed with the Commission by the defendants. The Pullman Company claimed that it had furnished without discrimination first class accommodations to the plaintiff and all other persons who applied and paid for such services as it had for sale and that it in no wise made any discrimination, although it was not a common-carrier; it further claimed that it did not own nor control the inferior accommodations in the equipment with which the plaintiff was compelled to occupy between Memphis, Tennessee, and Hot Springs, Arkansas, during a part of his interstate journey.

The Illinois Central admitted it was a common-carrier; did sell to plaintiff the first class round trip ticket from Chicago to Hot Springs; did receive the regular fare charged all other first class passengers and did furnish to the plaintiff equal accommodations with all other white passengers holding first class tickets on this interstate journey while plaintiff was traveling on the railroad from Chicago to Memphis.

The Rock Island admitted that it was a common-carrier by railroad; engaged in the transportation of passengers and was on April 20, 1937; it admitted the substance of the complaint by the plaintiff but denied that such acts constituted a violation of the Interstate Commerce Act and the Fourteenth Amendment of the United States Constitution and claimed to have acted under the Arkansas Separate Car Law.

Each of the defendants prayed a dismissal of the complaint. March 7, 1938, a hearing was held before an examiner of the Commission at Chicago, Illinois.

That the undisputed and uncontradicted testimony of the chief witness, Albert W. Jones, a conductor on the Rock Island for thirty-two years, offered by the defendant, Rock Island, fully sustains the allegations contained in the complaint filed before the Commission, an excerpt from the

abstract of his testimony as contained in the initial brief of the complainant and which was before the Commission is as follows:

P. 43:

"The only provision that the Rock Island has for carrying all colored passengers is in that part of the Jim Crow car." A colored person who has a first class ticket is compelled to ride in the Jim Crow car with all other colored persons who have second-class tickets or 'two-cent-per-mile' tickets. 'A white person with a first-class ticket is entitled to use the Pullman, the diner and observation car, which provide first class accommodations. (R. 148)."

P. 44:

"The Rock Island Railroad Company has no such first-class accommodations for Negroes, although the Negroes may have first-class tickets on the Rock Island Railway or 'three-cent-per-mile' tickets. During the thirty-two years I have worked over there in Arkansas, for the Rock Island Railroad Company it has never had any first-class accommodations for Negroes (R. 149). And they haven't any first-class accommodations in the sleeping cars for Negroes now."

"The Rock Island Railroad Company does not at this time have any first-class accommodations for colored passengers paying the 'three-cent-a-mile' fare permitting them to use the observation car which belongs to the Rock Island. They cannot use the dining car, nor sleeping car, although they may hold first-class tickets."

P. 45:

"Congressman Mitchell was sitting in Section 3 of the Pullman car alone (R. 134). I do not know if anyone occupied Section 3 from Memphis to Hot Springs on April 21st, but whether the space had been sold or not. I would not have sold a seat Section 3 or any other space in that Pullman car to Congressman

Mitchell, because he was a colored person. I know he had a first-class interstate round-trip ticket from Chicago, Illinois, to Hot Springs, Arkansas."

"The accommodations furnished to Negro passengers in the Jim Crow car where Congressman Mitchell was compelled to ride are not equal to the accommodations furnished in the observation car by the Rock Island Railway to white passengers holding first-class tickets." (R. 155).

"There is porter service furnished to the passengers in the observation car but no porter service furnished to the colored passengers in the Jim Crow cars" (R. 157).

"The Jim Crow car which all colored passengers were compelled to ride in in April, 1937, had three compartments (R. 158). There was no running water, no wash basins or towels. There were only paper towels furnished in the compartment of the Jim Crow car but linen and paper towels were furnished in the observation car (R. 160). There was only one toilet in the compartment where Congressman Mitchell was riding in the Jim Crow car, which was 'for women'. There was none for men who were riding in that compartment" (R. 161).

P. 46:

"I have never sold any colored person any space or accommodations in the Pullman car during my entire service."

"But I had charge of the train as the conductor for the company and having charge of the train for the company I felt it was my duty to put the congressman out of the sleeping car into the Jim Crow car (R. 168). The congressman did complain and protest being put out of the Pullman car. He showed me his ticket and offered to pay for the accommodations. But told him he was a colored man and couldn't ride in those first-class accommodations. If there had been a white passenger with a first-class ticket who had boarded the train at Memphis, for Hot Springs, and had asked for

a berth or a seat in that Pullman car, where there were vacant seats or had asked for a seat in the observation car, I would have sold it to him. I do not know how many colored people apply for Pullman tickets in Hot Springs, for Chicago, and are refused (169). If the compartments or stateroom are occupied, no colored person can ride in the body of the sleeping car. No colored persons are allowed to ride in the observation car which belongs to the Rock Island, even if they have first-class tickets. Those are the rules of the railway company and I follow the rules."

P. 47:

"I sell space on that train for seats in the observation car but would not sell a colored person any accommodations in the observation car, although he had a first-class ticket (R. 171). The white people and colored people are charged the same fare for the 'three-cent-per-mile' ticket, or the 'first-class tickets' (R. 172). There is no difference in the charge for the ticket because of color. The Pullman car is better equipped than the Jim Crow car. If a white passenger with a first-class ticket was put out of the Jim Crow car he could receive the first-class accommodations of the Pullman Car, and would not be compelled to purchase a compartment or a seat in the compartment. He could buy a seat in the Pullman car or observation car, or parlor car. The only requirement is, his having a first-class or 'three-cents-per-mile' ticket. They have the entire car (R. 174). Colored people can not ride in that car, even if they have a first- or second-class ticket. All the colored people who ride on my train must stay in the Jim Crow car, no matter what kind of a ticket they have."

Briefs were filed by all parties and on May 5, 1938, the Examiner issued a proposed report finding that the allegations of the complaint were substantially true but recommended a dismissal of the complaint. Exceptions were filed by the complainant to which the defendant Rock Island

replied. July 6, 1938, oral argument was made by the parties before the Commission in Washington, D. C.

November 7, 1938, the commission issued a report, *Arthur W. Mitchell* v. *Chicago, Rock Island & Pacific Railway Company*, 229 I. C. C. 703, containing its findings of facts and conclusions thereon. The complaint was dismissed although the facts constituting violations of the Interstate Commerce Act as alleged in the complaint and as shown by the evidence were admitted to be true. A petition for rehearing and reargument was filed by the plaintiff before the Commission, a reply was filed by the Rock Island and the petition for rehearing was denied March 6, 1939.

April 20, 1939, a petition was filed in the District Court for the Northern District of Illinois, Eastern Division, under the Urgent Deficiencies Act, 38 Stat. 219; U. S. C. A., Tit. 28, Sec. 41 (27) and (28) and Secs. 43-48, in equity, in which the District Court was requested to enter a decree setting aside, annulling and vacating the order of the Commission on November 7, 1938, which dismissed the plaintiff's complaint in No. 27844, *Arthur W. Mitchell* v. *Chicago, Rock Island & Pacific Railway Company, et al.* The suit was filed against the three defendants, who were parties before the Commission, the United States and the Interstate Commerce Commission as required by law.

Answers were filed by the defendants and the cause was heard before a three Judge court. A complete transcript of the Evidence and the proceedings before the Commission having been certified, were introduced as evidence along with the proposed report of the Examiner and the final report and orders of the Commission. June 27, 1940, an order and decree was entered by the District Court dismissing the cause upon the findings of fact and conclusions of law filed with the decree and order.

An appeal has been prayed and allowed to this court under the statutes in such case made and provided.

V. The grounds upon which it is contended the questions involved are substantial are as follows:

1.

The District Court in dismissing the Petition of the plaintiff for lack of jurisdiction, although a negative order, in form was a denial of the rights, privileges and immunities claimed by the plaintiff and in effect was an affirmative order. Such order and decree is final and appealable.

Rochester Telephone Company v. *United States et al.*, 307 U. S. 125, 130, 135;

United States v. *Maher*, 307 U. S. 148, 152;

Baltimore & Ohio Railroad Company et al. v. *United States et al.*, 49 S. Ct. 492, 73 L. Ed. 954; 279 U. S. 781, 783;

Manufacturers Railway Co. & St. Louis Southwestern Railway Company v. *United States, and Interstate Commerce Commission*, 246 U. S. 457, 460.

2.

The Petition filed in the United States District Court by the plaintiff was to set aside, annul or suspend an order of the Interstate Commerce Commission entered November 7, 1938 which order dismissed the complaint filed by the plaintiff with the Interstate Commerce Commission seeking a cease and desist order.

Title 28 U. S. C. A. Par. 41 (28).

3.

A direct appeal to the Supreme Court of the United States is authorized from the final order and decree entered in this cause by the three judge court June 27, 1940.

Title 28 U. S. C. A. Sec. 47-a; (Judicial Code, Sec. 210);

Atchison, Topeka & Santa Fe Railway Co., et al. v. *United States et al.*, 279 U. S. 768, 770, 49 S. Ct. 494; 73 L. Ed. 947.

4.

The rights, privileges and immunities claimed by the plaintiff and denied him, by the order of the Interstate Commerce Commission and the final order and decree of the United States District Court, are based upon the Constitution of the United States, Fourteenth Amendment thereof and the Laws of Congress enacted pursuant thereto.

Fourteenth Amendment of the United States Constitution, Secs. 1-5.

Section 1 declares the plaintiff to be a citizen of the United States and of the State of Illinois, and forbids any state, to make or enforce any law which shall abridge the privileges and immunities of any citizen of the United States; to deprive any person of life, liberty or property without due process of law and to deny any person within its jurisdiction the equal protection of the laws.

Section 5 thereof grants to Congress the power to enforce, by appropriate legislation, the provisions of the Fourteenth Amendment.

Article IV of the United States Constitution provides that citizens of each State shall be entitled to *all* privileges or immunities of citizens in the several States.

Title 3 U. S. C. A. Secs. 41 and 43, (referred to as the Civil Rights or Enforcement Acts).

Section 41 guaranteed the right of the plaintiff to make and enforce his contract for first-class facilities on his interstate journey and gave to him the *full* and *equal* benefit of all laws for the security of his person and property as enjoyed by white persons.

Section 43 prohibits *every person* under color of any statute, * * * regulation, custom or usage, of any State

• • • from doing any act which subjects or causes to be subjected, any citizen of the United States • • • within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.

5.

The plaintiff having paid for a first-class ticket and having been accepted as a first-class interstate passenger by the common carriers, was entitled to the equal enjoyment of equal accommodations and facilities, furnished to all first-class interstate passengers, engaged in the same journey, and a denial to the plaintiff of the use of available space in the Pullman car, by the train conductor while according the use of first-class facilities and accommodations to other white persons paying the identical fare paid by the plaintiff, was a violation of the Interstate Commerce Act and the Constitutional rights of the plaintiff.

McCabe v. *Atchison, Topeka and Santa Fe Railway Company,* 235 U. S. 151, 35 S. Ct. 69, 71;

Buchanan v. *Warley,* 245 U. S. 60, 38 S. Ct. 16, 19, 20;

Missouri ex rel. Gaines v. *Canada, Registrar of the University of Missouri et al.,* 305 U. S. 337, 344, 350, 351;

Interstate Commerce Act, Title 49 U. S. C. A., Secs. 1 (5), 2 and 3 (1), 13 (4), 15 (1).

6.

The right to receive equal accommodations and facilities with all other persons paying the identical fare with the plaintiff is a personal right and is not dependent upon whether any other colored person or persons failed to exercise such right or not. This honorable court has conclusively decided this question in favor of the contention of the

plaintiff and the order of the commission and decree of the district court are contrary to the decisions of this Court.

McCabe v. *Atchison, Topeka & Santa Fe Railway Company,* 235 U. S. 151; 35 S. Ct. 69, 71;

Buchanan v. *Warley,* 245 U. S. 60, 38 S. Ct. 16, 19, 20;

Missouri ex rel. Gaines v. *Canada, Registrar of the University of Missouri et al.,* 305 U. S., 337, 344, 350, 351.

7.

The order of the Commission and the decree of the District Court are contrary to the former decisions of the Interstate Commerce Commission which holds that it was the duty of the railways to furnish, for all passengers paying the same fare, cars in all respects equal and provided with the same comforts, accommodations and protection for travelers.

Councill v. *Western & Atlantic Railroad Co.,* 1 I. C. C. 339, 1 I. C. C. 638;

Heard v. *Georgia Railroad Company,* 1 I. C. C. 428, 1 I. C. C. 719;

Edwards v. *Nashville, Chattanooga & St. Louis Ry Co.,* 12 I. C. C. 247, 249.

In each of which cases a cease and desist order was issued and acts similar to the acts alleged in the complaint of the plaintiff and proven by indisputable evidence on the hearing, were held to be *undue* and *unjust discrimination* against the colored passengers.

8.

Under the Interstate Commerce Act the plaintiff was compelled to file his complaint and obtain a ruling from the Commission before applying to the courts for relief.

Title 49, U. S. C. A. Sec. 1, par. 2, Sec. 1 (par. 1), sec. 13, pars. 1, 3, 4; sec. 15 (1).

2.

Under the Constitution Congress is given exclusive jurisdiction over interstate commerce and the separate car law of the State of Arkansas has no application to interstate passengers.

United States Constitution, Art. 1, sec. 8 (Interstate Commerce clause);

McCabe v. *Atchison, Topeka & Santa Fe Ry. Co.*, 235 U. S. 151, 59 L. Ed. 169, 35 S. Ct. 69, 70. IN WHICH THIS COURT HELD THAT IN THE ABSENCE OF A DIFFERENT CONSTRUCTION BY THE HIGHEST COURT OF THE STATE, THE SEPARATE CAR LAWS OF THE STATES, MUST BE CONSTRUED AS APPLYING TO TRANSPORTATION EXCLUSIVELY INTRASTATE, IN ORDER NOT TO CONTRAVENE THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION. CASES ARE THEREIN CITED TO CONCLUSIVELY SUSTAIN THIS CONTENTION, AND THE ORDER OF THE COMMISSION AND THE DECREE OF THE DISTRICT COURT ARE CONTRARY TO THESE DECISIONS OF THIS HONORABLE COURT.

Hall v. *DeCuir*, 95 U. S. 485; 24 L. Ed. 547, 501. One of the earliest cases to decide this point is in harmony with the subsequent decisions of this Honorable Court, cited in *McCabe* v. *Atchison, Topeka & Santa Fe Railway Company*, 235 U. S. 151.

Brown v. *Memphis & C. Ry. Co.*, 5 Fed. 499, 501 (C. C. Tenn. 1880);

Huff v. *Norfolk & Southern Railway*, 88 S. E. 344, 345; 171 N. C. 203, 205;

Washington, B. & A. Electric R. Co. v. *Waller*, 289 Fed. 598, 600 (C. C. A. D. C.);

Hart v. *State of Maryland*, 100 Md. 595; 60 Atl. 457. 463.

10.

The order of the Commission and the decree of the District Court are contrary to the previous decisions of the various Federal and State courts, which hold, that common carriers, engaged in interstate commerce are bound to provide for colored passengers, holding first-class tickets, accommodations precisely equal in all respects to those provided for white passengers holding similar tickets and traveling in interstate commerce.

Gray v. *Cincinnati Ry. Co.*, 11 Fed. 683, 686 (C. C. Ohio, 1882);

Murphy v. *Western & A. Railroad Co.*, 23 Fed. 637, 639 (C. C. Tenn. 1885). Which also holds that a passenger has a right to choose whether he will contract and purchase first, second, or third-class tickets and is entitled to the kind and class of accommodations or facilities, throughout his journey, according to the fare paid and accommodations contracted for by him;

Logwood and Wife v. *Memphis & C. Ry.*, 37 Fed. 318, 319 (C. C. Tenn. 1885). Which holds that common carriers are required by law not to make any unjust discrimination, and must treat all passengers paying the same price alike.

The Sue, 22 Fed. 843, 845 (D. C. Md. 1835);

Houck v. *Southern Pacific Ry. Co.*, 38 Fed. 226, 228 (C. C. Tex. 1888) holding; "It is the duty of carriers to furnish to the colored passenger who pays a first-class fare over the line, a car to ride in as safe, and substantially as comfortable and inviting, to travel in, as it furnishes to white passengers paying similar first-class fares."

McGuinn v. *Forbes, et al.*, 37 Fed. 639 (D. C. Md. 1889).

11.

The action sought to be reviewed involves an order of the commission and final decree of the District Court refusing to forbid further unjust discrimination by the common carriers and compel them to cease their violations of the sections of the Interstate Commerce Act, above mentioned, which violations are prejudicial to the rights of the plaintiff and all other American citizens who are persons of color and is reviewable by this direct appeal.

Rochester Telephone Company v. *United States, et al.*, 307 U. S. 125, 130, 135.

12.

The order of the commission and the decree of the United States District Court are entirely void for the following reasons;

(a) They are unsupported by any evidence appearing in the record,

(b) They are contrary to the indisputable character of the evidence,

(c) They are arbitrary and baseless,

(d) They are inconsistent with rational justice,

(e) They come under the constitution's condemnation of all arbitrary exercise of power,

(f) They are contrary to the undisputed uncontradicted evidence contained in the record,

(g) They are based upon a misapprehension of the law and an erroneous construction of the law,

(h) They are contrary to the United States Constitution, the fourteenth amendment thereto, and the laws of Congress enacted under the authority of the Constitution,

(i) They are contrary to and conflict with the former decisions of the Interstate Commerce Commission in cases involving the identical situation as the case at bar,

(j) They are contrary to the decisions of the United States Supreme Court and the subordinate Federal courts,

(k) They are contrary to the evidence of record and are without support of any evidence in the record,

(l) They deny to the plaintiff and all other American citizens of color traveling in interstate commerce, as first class passengers, having paid first class fares, the due process of law and the equal protection of the laws guaranteed by the fourteenth amendment of the United States Constitution.

Interstate Commerce Commission v. *Louisville & Nashville Railroad Company*, 227 U. S. 88, 91 (and cases cited in the opinion of the court).

13.

The finding and order of the Commission and the decree of the District Court are not conclusive, as matters of constitutional rights are not to be conclusively determined by the Commission.

Manufacturer's Railway Company and St. Louis Southwestern Railway Company v. *United States and Interstate Commerce Commission*, 246 U. S., 488, 489.

14.

The Fourteenth Amendment is one of a series of constitutional provisions having a common purpose, namely securing to a race recently emancipated, a race that through many generations had been held in slavery, all the civil rights that the superior race enjoyed. * * * It was designed to assure to the colored race the enjoyment of all the

civil rights that under the law are enjoyed by white persons, etc.

Strauder v. *West Virginia,* 100 U. S., 303, 306, 25 L. Ed. 664.

Buchanan v. *Warley,* 245 U. S. 60, 38 S. Ct. 16, 19.

15.

The Federal Constitution and the law passed within its authority by the express terms of that instrument are made the supreme law of the land and the defendants cannot legally claim protection under any State law which is contrary to or conflicts with the Federal Constitution or any law passed within its authority.

Buchanan v. *Warley,* U. S. 245, 60, 38 S. Ct. 16, 18.

16.

The principles of justice and equality in the transportation of persons and property, enunciated by the decisions of the Interstate Commerce Commission, and above set forth herein, the United States Supreme Court and the inferior Federal courts are embedded in the Interstate Commerce Act, and rest upon no less a foundation than the Constitution of the United States. The equality of civil and political rights and equal protection of the law without discrimination (except for misconduct or crime) are subjects not open for discussion. They are fundamental principles of government and jurisprudence. Whoever attempts to deny these principles in their just application puts himself in antagonism to the established law of the land.

Heard v. *Georgia Railroad Company,* 1 I. C. C. 428, 431, 432.

17.

If a railroad company, engaged in interstate commerce, provides certain facilities and accommodations for first

class passengers of the white race, it is commanded by the law that like accommodations shall be provided for colored passengers of the same class. The principle that must govern is that the carriers must serve equally well, all passengers, whether white or colored, paying the same fare. Failure to do this is discrimination and subjects the passengers to "undue and unreasonable prejudice and disadvantage".

Dissenting opinion, Commissioner Lee, *Arthur W. Mitchell* v. *Chicago, Rock Island and Pacific Railway Company et al.*, 229 I. C. C. 703, quoting from *Edwards* v. *Nashville, Chattanooga and St. Louis Railway Company*, 12 I. C. C. 247, 249.

Conclusion.

Simple justice in the interpretation and application of the Federal Constitution, the Fourteenth Amendment and all laws made pursuant thereto, should require equality in interstate transportation of all American citizens without regard to race or color, as any other interpretation will nullify their plain and unambiguous provisions.

Respectfully submitted,

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